

1 HAROLD M. BRODY, SBN 084927
2 MYLENE J. BROOKS, SBN 175533
3 PROSKAUER ROSE LLP
4 2049 Century Park East, 32nd Floor
5 Los Angeles, CA 90067-3206
Telephone: (310) 557-2900
Facsimile: (310) 557-2193
Email: hbrody@proskauer.com
Email: mybrooks@proskauer.com

6 Attorneys for Defendant
COLLEGE ENTRANCE
7 EXAMINATION BOARD

8 DANIEL F. PYNE, SBN 131955
HOPKINS & CARLEY
9 70 South First Street
San Jose, CA 95113
10 Telephone: (408) 286-9800
Facsimile: (408) 998-4790
11 Email: dpyne@hopkinscarley.com

12 Attorneys for Plaintiff
MATTHEW GUAGLIARDO

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

17 MATTHEW GUAGLIARDO,) Case No. C07 05325 RMW (PVT)
18 Plaintiff,)
19 v.)
20 COLLEGE ENTRANCE EXAMINATION)
BOARD, and DOES 1 through 50, inclusive,)
21 Defendants.)
22)
) **JOINT CASE MANAGEMENT**
) **STATEMENT AND [PROPOSED]**
) **ORDER**
) Conference date: February 15, 2008
)

1 Pursuant to Civil Local Rule 16-9, Defendant College Entrance Examination Board
 2 (“Defendant”) and Plaintiff Matthew Guagliardo (“Plaintiff”), jointly submit this Case
 3 Management Statement.

4 **1. JURISDICTION AND SERVICE**

5 This Court has subject matter jurisdiction over Plaintiff’s claims pursuant to 28 U.S.C.
 6 sections 1332 and 1441.

7 The parties assert that personal jurisdiction exists and venue is proper, and no parties
 8 remain to be served.

9 **2. FACTS**

10 Plaintiff was hired by Defendant on or about July 5, 2006, as a Regional Operations
 11 Director. On October 27, 2006, Plaintiff was terminated. Plaintiff claims that he discovered and
 12 reported unlawful employment practices during his tenure to managers of Defendant, namely, his
 13 direct supervisor, Al Mijares, Western Regional Office Vice President, and to Connie Smith,
 14 Executive Vice President of Operations, to whom Mr. Mijares reported, and that as a result of his
 15 reporting these unlawful employment practices, he was retaliated against and wrongfully
 16 terminated in violation of public policy. Among the unlawful employment practices alleged by
 17 the plaintiff were (a) failure to pay overtime compensation, (b) failure to grant meal periods to
 18 nonexempt employees, (c) failure to adopt an injury and illness prevention program, and (d)
 19 failure to make proper payment of final wages to terminated employees. Plaintiff also alleges that
 20 on October 27, 2006, he was terminated but was not paid his accrued but unused vacation pay in
 21 violation of Labor Code section 227.3. Defendant denies Plaintiff’s allegations in their entirety.

22 On or about August 21, 2007, Plaintiff filed his civil complaint in the Superior Court for
 23 the County of Santa Clara. Subsequently, on October 18, 2007, Defendant removed the action to
 24 this Court where it is pending.

25 **3. LEGAL ISSUES**

26 1. Whether Defendant terminated Plaintiff in violation of public policy based
 27 on his alleged opposition to unlawful employment practices.

28 2. Whether Defendant retaliated against Plaintiff based on his alleged

1 opposition to unlawful employment practices.

2 3. Whether Defendant failed to pay Plaintiff his accrued but unused vacation
 3 time at the time of his termination in violation of Labor Code section 227.3.
 4 4. Whether Plaintiff is entitled to penalties pursuant to Labor Code section 203
 5 for Defendant's alleged failure to pay him his accrued but unused vacation
 6 time at the time of his termination.

7 **4. MOTIONS**

8 The parties anticipate filing cross-motions for summary judgment.

9 **5. AMENDMENT OF PLEADINGS**

10 The parties do not yet know whether any amendment of pleadings will be necessary. Any
 11 amendments will be made no later than October 15, 2008.

12 **6. EVIDENCE PRESERVATION**

13 All evidence has been preserved.

14 **7. DISCLOSURES**

15 The parties anticipate exchanging initial disclosures pursuant to Federal Rule of Civil
 16 Procedure 26(a)(1) on February 3, 2008.

17 **8. DISCOVERY**

18 The parties expect to propound written discovery in the form of document demands,
 19 interrogatories, and requests for admission.

20 The parties do not presently propose to limit or modify the discovery rules except for by
 21 agreement to increase the length of fact witness depositions beyond seven hours.

22 **9. CLASS ACTIONS**

23 Not applicable.

24 **10. RELATED CASES**

25 None.

26 **11. RELIEF**

27 Plaintiff seeks damages for emotional distress and loss of income arising from the alleged
 28 wrongful conduct of Defendant. Plaintiff also seeks payment of accrued but unused vacation time

1 and corresponding penalties for untimely payment, as well as punitive damages, interest, attorney
2 fees and cost of suit.

3 Plaintiff presently estimates his existing loss of wages and benefits at approximately
4 \$120,000, with losses of wages and benefits continuing to accrue at a rate of approximately
5 \$40,000 per year. The plaintiff also seeks to recover general damages for emotional distress and
6 will seek to recover in excess of \$500,000 for such damages, plus punitive damages in an amount
7 according to proof.

8 Defendant disagrees with Plaintiff's claim for relief and contends that Plaintiff has suffered
9 no injury and has failed to allege facts sufficient to allow recovery of punitive damages in any
10 event.

11 **12. SETTLEMENT AND ADR**

12 Plaintiff made an initial monetary demand prior to filing his civil action, to which
13 Defendant declined to accept or counter. Since then, the parties have not engaged in settlement
14 discussions. The parties believe that conducting discovery on the facts surrounding Plaintiff's
15 employment and termination will be necessary to position the parties to negotiate a resolution.
16 The parties intend to participate in mediation as soon as possible but in no event later than the
17 deadline set by the Court regarding participation in the ADR process.

18 **13. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

19 The parties do not consent.

20 **14. OTHER REFERENCES**

21 Not applicable.

22 **15. NARROWING OF ISSUES**

23 The parties do not anticipate narrowing any issues at this time. Furthermore, the parties
24 do not request to bifurcate issues, claims, or defenses at this time but reserve the right to make
25 such a request at a later date.

26 **16. EXPEDITED SCHEDULE**

27 Please see proposed schedule in Item 17.

17. SCHEDULING

2 The parties propose the following dates (*see also* Proposed Joint Discovery Planned filed
 3 concurrently herewith):

4 Fact Discovery Cutoff: September 15, 2008.

5 Deadline for filing all dispositive motions: December 5, 2008.

6 Trial: January 19, 2009.

18. TRIAL

8 Seven (7) day jury trial.

9 19. DISCLOSURES OF NON-PARTY INTERESTED ENTITIES OR PERSONS

10 The parties know of no non-party interested entity or person other than those already
 11 disclosed by the parties, if any.

12 20. OTHER MATTERS.

13 Defendant hereby attests that counsel for Plaintiff has authorized Defendant to
 14 electronically sign this Joint Case Management Statement on Plaintiff's behalf.

15 Dated: February 1, 2008

HAROLD M. BRODY
 MYLENE J. BROOKS
 PROSKAUER ROSE LLP

18 /S/

19 Mylene J. Brooks
 20 Attorneys for Defendant
 21 COLLEGE ENTRANCE EXAMINATION
 22 BOARD

22 Dated: February 1, 2008

DANIEL F. PYNE
 HOPKINS & CARLEY

24 /S/

25 Daniel F. Pyne
 26 Attorney for Plaintiff
 27 MATTHEW GUAGLIARDO

1 **[PROPOSED] ORDER**

2 The above Joint Case Management Statement is hereby adopted by the Court as the Case
3 Management Order for the case and the parties are ordered to comply with this order. In addition,
4 the Court orders: _____

5 _____
6 _____
7 _____
8 _____
9 _____
10 _____
11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____

Dated: _____

18 _____
19 UNITED STATES DISTRICT JUDGE
20
21
22
23
24
25
26
27
28